

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HELAL AHMED, PARVEZ ALI, MD. G. MIAH,  
ENAMUL SHAKUR, CARLOS ORTIZ,  
GRZEGORZ KOCIECKI, MAHBUBUL KARIM,  
TANVIR SHAHID, ADRIAN DOMINGUEZ RESENDIZ,  
CESAR ABAMBARI, HORACIO HERNANDEZ,  
JOSE REYES, PATRICIO GONZALEZ,  
SHAILENDRA SHRESTHA, AND ROHIT TALWAR,  
MARCOS REYES, ROBERTO SEGUNDO,  
FELIX SEGUNDO, and AUGUSTIN REYES, on behalf of  
themselves and other similarly situated current and  
former restaurant workers employed by defendants,

07 Civ. 3512 (JSR) (FM)

**ANSWER TO SECOND  
AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs,

-against-

DEVI RESTAURANT, LTD., RAKESH AGGARWAL,  
SUVR SARAN, and HEMANT MATHUR,

Defendants.

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Defendants, 8 East 18<sup>th</sup> Street Restaurant, LLC, s/h/a Devi Restaurant, Ltd., ("Devi"), and Rakesh Aggarwal, by their attorneys Mitchell & Incantalupo, as and for their answer to the Second Amended Complaint, allege and state that they:

**PRELIMINARY STATEMENT**

1. Deny the allegations set forth in paragraph "1" of the Second Amended Complaint, except admit that Plaintiffs purport to proceed against Defendants as set forth therein.

2. Deny the allegations set forth in paragraph "2" of the Second Amended Complaint, except admit that Devi was owned and operated by defendant Aggarwal until approximately August 27, 2007, when the restaurant closed.

3. Deny the allegations set forth in paragraph "3" of the Second Amended Complaint.

4. Deny the allegations set forth in paragraph "4" of the Second Amended Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

**JURISDICTION**

5. Deny the allegations set forth in paragraph "5" of the Second Amended Complaint, except admit that the jurisdiction of this Court is purportedly invoked as set forth therein.

6. Deny the allegations set forth in paragraph "6" of the Second Amended Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

7. Admit that Devi was located in Manhattan.

**PARTIES**

8. Deny the allegations set forth in paragraph "8" of the Second Amended Complaint, except admit that some of the Plaintiffs used to work for Devi serving customers.

9. Deny the allegations set forth in paragraph "9" of the Second Amended Complaint, except admit that some of the Plaintiffs used to work for Devi in the kitchen.

10. Deny that they possess knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "10" of the Second Amended Complaint.

11. Deny the allegations set forth in paragraph "11" of the Second Amended Complaint require a response and affirmatively assert that the meaning and construction of the statutes are for the Court to determine.

12. Deny the allegations set forth in paragraph "12" of the Second Amended Complaint, except admit that Devi had annual gross sales in excess of \$500,000.00. Defendants further affirmatively respond that Devi was a limited liability corporation formed and organized under the laws of the State of New York in 2002 under the name 8 East 18<sup>th</sup> Street Restaurant, LLC.

13. Admit the allegations set forth in paragraph "13" of the Second Amended Complaint.

14. Deny the allegations set forth in paragraph "14" of the Second Amended Complaint, except admit that Suvir Saran was a chef at Devi until it closed.

15. Deny the allegations set forth in paragraph "15" of the Second Amended Complaint, except admit that Hemant Mathur was a chef at Devi until it closed.

16. Deny the allegations set forth in paragraph "16" of the Second Amended Complaint require a response and affirmatively assert that the meaning and construction of the statutes are for the Court to determine.

#### **STATEMENT OF FACTS**

17. Deny the allegations set forth in paragraph "17" of the Second Amended Complaint.

18. Deny the allegations set forth in paragraph "18" of the Second Amended Complaint.

19. Deny the allegations set forth in paragraph "19" of the Second Amended Complaint.

20. Deny the allegations set forth in paragraph "20" of the Second Amended Complaint.

21. Deny the allegations set forth in paragraph "21" of the Second Amended Complaint.

22. Deny the allegations set forth in paragraph "22" of the Second Amended Complaint.

23. Deny the allegations set forth in paragraph "23" of the Second Amended Complaint.

24. Deny the allegations set forth in paragraph "24" of the Second Amended Complaint.

25. Deny the allegations set forth in paragraph "25" of the Second Amended Complaint.
26. Deny the allegations set forth in paragraph "26" of the Second Amended Complaint.
27. Deny the allegations set forth in paragraph "27" of the Second Amended Complaint.
28. Deny the allegations set forth in paragraph "28" of the Second Amended Complaint.
29. Deny the allegations set forth in paragraph "29" of the Second Amended Complaint.
30. Deny the allegations set forth in paragraph "30" of the Second Amended Complaint.

**FIRST CAUSE OF ACTION**

31. Deny that the allegations set forth in paragraph "31" of the Second Amended Complaint require a response.
32. Defendants Devi and Aggarwal repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "31" as if more fully set forth at length herein.
33. Deny the allegations set forth in paragraph "33" of the Second Amended Complaint.
34. Deny the allegations set forth in paragraph "34" of the Second Amended Complaint.
35. Deny the allegations set forth in paragraph "35" of the Second Amended Complaint.

**SECOND CAUSE OF ACTION**

36. Defendants Devi and Aggarwal repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "35" as if more fully set forth at length herein.
37. Deny the allegations set forth in paragraph "37" of the Second Amended Complaint.
38. Deny the allegations set forth in paragraph "38" of the Second Amended Complaint.
39. Deny the allegations set forth in paragraph "39" of the Second Amended Complaint.

**THIRD CAUSE OF ACTION**

40. Defendants Devi and Aggarwal repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "39" as if more fully set forth at length herein.
41. Deny the allegations set forth in paragraph "41" of the Second Amended Complaint.
42. Deny the allegations set forth in paragraph "42" of the Second Amended Complaint.

**FOURTH CAUSE OF ACTION**

43. Defendants Devi and Aggarwal repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "42" as if more fully set forth at length herein.
44. Deny the allegations set forth in paragraph "44" of the Second Amended Complaint.
45. Deny the allegations set forth in paragraph "45" of the Second Amended Complaint.

46. Deny the allegations set forth in paragraph "46" of the Second Amended Complaint.

47. Deny the allegations set forth in paragraph "47" of the Second Amended Complaint.

**FIFTH CAUSE OF ACTION**

48. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "47" as if more fully set forth at length herein.

49. Deny the allegations set forth in paragraph "49" of the Second Amended Complaint.

50. Deny the allegations set forth in paragraph "50" of the Second Amended Complaint.

51. Deny the allegations set forth in paragraph "51" of the Second Amended Complaint.

**SIXTH CAUSE OF ACTION**

52. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "51" as if more fully set forth at length herein.

53. Deny the allegations set forth in paragraph "53" of the Second Amended Complaint.

54. Deny the allegations set forth in paragraph "54" of the Second Amended Complaint.

55. Deny the allegations set forth in paragraph "55" of the Second Amended Complaint.

**SEVENTH CAUSE OF ACTION**

56. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "55" as if more fully set forth at length herein.

57. Deny the allegations set forth in paragraph "57" of the Second Amended Complaint.

58. Deny the allegations set forth in paragraph "58" of the Second Amended Complaint.

59. Deny the allegations set forth in paragraph "59" of the Second Amended Complaint.

**EIGHTH CAUSE OF ACTION**

60. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "59" as if more fully set forth at length herein.

61. Deny the allegations set forth in paragraph "61" of the Second Amended Complaint.

62. Deny the allegations set forth in paragraph "62" of the Second Amended Complaint.

63. Deny the allegations set forth in paragraph "63" of the Second Amended Complaint.

**NINTH CAUSE OF ACTION**

64. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "63" as if more fully set forth at length herein.

65. Deny the allegations set forth in paragraph "65" of the Second Amended Complaint.

66. Deny the allegations set forth in paragraph "66" of the Second Amended Complaint.

**TWELFTH CAUSE OF ACTION (RETALIATION)**

67. Defendants repeat, reiterate and reallege each and every answer contained in paragraphs "1" through "66" as if more fully set forth at length herein.

68. Deny the allegations set forth in paragraph "68" of the Second Amended Complaint.

69. Deny the allegations set forth in paragraph "69" of the Second Amended Complaint.

70. Deny the allegations set forth in paragraph "70" of the Second Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

71. All or part of the claims asserted herein by Plaintiffs are barred by the applicable statute of limitations.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

72. Defendants had legitimate business reasons for taking any of the acts alleged by the plaintiffs to have been retaliatory.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

73. Plaintiffs have failed to mitigate their alleged damages.

**WHEREFORE**, defendants 8 East 18<sup>th</sup> Street Restaurant, LLC, s/h/a Devi Restaurant, Ltd., and Rakesh Aggarwal request judgment dismissing the Complaint and denying all relief requested therein, together with the costs of defending this action, including reasonable attorney fees.

Dated: October 17, 2007  
Forest Hills, New York

MITCHELL & INCANTALUPO

By: \_\_\_\_\_ /S/  
Arthur H. Forman (AF-9646)  
98-20 Metropolitan Avenue  
Forest Hills, New York 11375  
Tel: 718-997-1000

*Attorneys for defendants 8 East 18<sup>th</sup>  
Street Restaurant, LLC, s/h/a Devi  
Restaurant, Ltd., and Rakesh  
Aggarwal*